

rule is intended to limit the use of a deposition for impeachment purposes.

(g) *Payment of fees.* Fees shall be paid by the person upon whose application the deposition is taken.

§ 26.19 Request for production of documents.

(a) *Request to produce.* At any time after a request for hearing has been filed, any party may serve upon any other party a written request to produce, and permit the party making the request to inspect and copy, any relevant designated documents (including writings, drawings, graphs, charts, and other data compilations). The request shall set forth the items to be inspected either by individual item or by category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(b) *Response to request to produce.* The party upon whom the request is served shall serve a written response within twenty days after service of the request unless the Hearing Officer determines that a shorter or longer period is appropriate under the circumstances. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which case the reasons for the objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under § 26.17 with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

§ 26.20 Admissions as to facts and documents.

(a) *Request for admissions.* At any time after an answer has been filed, any party may serve upon any other party a written request for the admission of the genuineness of any relevant documents described in the request or of the truth of any relevant matters of fact. Copies of documents shall be delivered with the request unless copies have already been furnished. No order of the hearing officer is necessary.

(b) *Objection.* Each requested admission shall be considered admitted unless, within fifteen days after service of the request, the party from whom the admission is sought serves upon the party making the request either (1) a statement denying specifically the relevant matters of which an admission is requested or setting forth in detail the reasons why the party can neither truthfully admit nor deny them, or (2) written objections on the ground that some or all of the matters involved are privileged or irrelevant. Answers on matters to which objections are made may be deferred until the objections are ruled upon, but if written objections are made only to a part of a request, the remainder of the request shall be answered.

(c) *Limitation.* Admissions obtained pursuant to this procedure may be used in evidence only for the purposes of the pending action to the same extent and subject to the same objections as other evidence.

§ 26.21 Prehearing conference.

(a) *Prehearing conference.* The hearing officer may, on the hearing officer's own motion or at the request of any party, direct counsel for all parties to confer with the hearing officer before the hearing for the purpose of considering:

(1) Simplification and clarification of the issues;

(2) Stipulations and admissions of fact and of the contents and authenticity of documents;

(3) The disclosure of the names of witnesses;

(4) Matters of which official notice will be taken;

(5) Other matters as may aid in the orderly disposition of the proceeding, including disclosure of the documents or other physical exhibits which will be introduced in evidence in the course of the proceeding.

(b) *Recordation of prehearing conference.* The prehearing conference shall, at the request of any party, be recorded or transcribed.

(c) *Order on prehearing conference.* The hearing officer shall enter in the record an order which states the rulings upon matters considered during

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the conference, together with appropriate directions to the parties. The order shall control the subsequent course of the proceeding, subject to modifications upon good cause shown.

HEARINGS

§ 26.22 Public nature and timing of hearings, transcripts.

(a) *Public hearings.* All hearings in adjudicative proceedings shall be public.

(b) *Conduct of hearing.* Hearings shall proceed with all reasonable speed. The hearing officer may order recesses for good cause, stated on the record. The hearing officer may, for convenience of the parties or in the interests of justice, order that hearings be conducted outside Washington, DC, and, if necessary, at more than one place.

(c) *Transcripts.* Hearings shall be recorded and transcribed only by a reporter designated by the Department under the supervision of the hearing officer. The original transcript shall be a part of the record and shall constitute the sole official transcript. Respondents and the public, at their own expense, may obtain copies of transcripts from the reporter.

§ 26.23 Rules of evidence.

(a) *Evidence.* Every party shall have the right to present its case or defense by oral and documentary evidence, unless otherwise limited by law or regulation, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Irrelevant, immaterial, privileged, or unduly repetitious evidence shall be excluded.

Unless otherwise provided for in this part, the Federal Rules of Evidence shall provide guidance for the conduct of proceedings under this part. Parties may object to clearly irrelevant material, but technical objections to testimony as used in a court of law will not be sustained.

(b) *Testimony under oath or affirmation.* All witnesses shall testify under oath or affirmation.

(c) *Objections.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of

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objections. Rulings on objections shall be a part of the transcript. Failure to object to admission or exclusion of evidence or to any evidentiary ruling shall be considered a waiver of objection, but no exception to a ruling on an objection is necessary in order to preserve it for appeal.

(d) *Authenticity of documents.* Unless specifically challenged, it shall be presumed that all relevant documents are authentic. An objection to the authenticity of a document shall not be sustained merely on the basis that it is not the original.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact. Stipulations may be received in evidence at a hearing, and when received shall be binding on the parties with respect to the matters stipulated.

(f) *Official notice.* All matters officially noticed by the hearing officer shall appear on the record.

(g) *Burden of proof.* The burden of proof shall be upon the proponent of an action or affirmative defense unless otherwise provided by law or regulation.

§ 26.24 Hearing officer's determination and order.

(a) *Scope of review.* The hearing officer shall conduct a *de novo* review of the administrative action to determine whether it is supported by a preponderance of the evidence unless a different standard of proof is required by law or regulation. Each and every charge alleged by the Department need not be proven to support the administrative action. The hearing officer may modify or vacate the administrative action under review only upon a particularized finding of facts which justifies a deviation from the administrative action.

(b) *Closing of hearing.* At the discretion of the hearing officer, the closing of the record may be postponed in order to permit the admission of other evidence into the record. In the event further evidence is admitted, each party shall be given an opportunity to respond to such evidence.